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19 Attorneys for Plaintiffs

20 UNITED STATES DISTRICT COURT

21 DISTRICT OF ARIZONA

22 Jessica Miracle; *et al.*,

23 Plaintiffs,

24 v.

25 Katie Hobbs, in her official capacity as Arizona  
26 Secretary of State,

27 Defendant.

No. 2:19-cv-04694-SRB

**MOTION TO SUPPLEMENT THE  
RECORD**

28 On July 18, 2019, Plaintiffs moved for a preliminary injunction against A.R.S § 19-118(C) (the “Strikeout Law”). *See* Doc. 9. In considering a motion for a preliminary injunction, one of the four factors that a court must evaluate is whether “the movant is likely to suffer irreparable harm in the absence of preliminary relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In the nearly five intervening months since the Plaintiffs sought relief, the election has approached closer and new evidence has come to light regarding the severity of the irreparable harm that is presently being caused by the Strikeout Law—specifically the means by which it is affirmatively chilling core political

1 speech by initiative proponents, and the permanence of that harm if the law is not enjoined  
2 in the next few weeks. Accordingly, Plaintiffs move to supplement the record with two  
3 declarations, both attached to this motion, which include additional details not available at  
4 the time of filing Plaintiffs' preliminary injunction motion, regarding the injuries that the  
5 Strikeout Law is currently imposing on Plaintiffs' and other initiative proponents' First and  
6 Fourteenth Amendment rights. This evidence further strengthens Plaintiffs' argument that  
7 preliminary relief is not only urgently needed, it is needed quickly, in order to avoid  
8 permanent and severe irreparable harm to their fundamental rights.

9 Under these circumstances, supplementation of the record is appropriate. A district  
10 court has "wide discretion" to grant a party leave to supplement the record in order "that  
11 the court may obtain accurate information when making its ruling." *LimoStars, Inc. v. New*  
12 *Jersey Car & Limo, Inc.*, 2011 WL 3471092, at \*3 (D. Ariz. Aug. 8, 2011), *report and*  
13 *recommendation adopted*, 2011 WL 4101100 (D. Ariz. Sept. 8, 2011); *see also In re*  
14 *Weiner*, 161 F.3d 1216 (9th Cir. 1998) (holding that denial of motion to supplement the  
15 record was an abuse of discretion). In even less urgent circumstances than those presented  
16 here, trial judges routinely grant motions to supplement the record with evidence for good  
17 cause shown. *United States v. Maris*, 2011 WL 468554, at \*5 n.5 (D. Nev. Feb. 4, 2011)  
18 (granting leave to file supplemental materials after motions were filed and oral argument  
19 held on a motion for summary judgment); *Mitchel v. Holder*, 2010 WL 816761, at \*1 n.1  
20 (N.D. Cal. Mar. 9, 2010) (granting leave to file supplemental declaration regarding newly  
21 obtained evidence); *Lumsden v. United States*, 2010 WL 2232946, at \*1 (E.D.N.C. June 3,  
22 2010) (granting a party leave to submit additional newly discovered evidence and stating  
23 that "the court deems it imprudent to permit the full record to go undeveloped").

24 Accordingly, with good cause shown, Plaintiffs move the Court to supplement the  
25 record with the two declarations lodged concurrently herewith.<sup>1</sup>

26  
27  
28 <sup>1</sup> On December 9, counsel for Plaintiffs' contacted counsel for the State and was  
advised that the State takes no position on this motion.

1 Dated: December 9, 2019

s/ Sarah R. Gonski

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ D. Freouf